

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

**DAVID RJASKO AND
IMELDA BENAVIDES**

VS.

**UNITED PROPERTY & CASUALTY
INSURANCE COMPANY, BRUCE
WELLS, PHILLIP BENJAMIN, AND
ALLEN BODDIE**

§
§
§
§
§
§
§
§

CIVIL ACTION NO. _____

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Please take notice that, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, UNITED PROPERTY & CASUALTY INSURANCE COMPANY (“United Property” or “Defendant”), Defendant herein, removes to this Court the state court action pending in the 28th Judicial District Court of Nueces County, Texas invoking this Court’s diversity jurisdiction, on the grounds explained below.

I. BACKGROUND

1. On April 25, 2019, Plaintiffs David Rjasko and Imelda Benavides (“Plaintiffs”) filed the present action in the 28th Judicial District Court of Nueces County, Texas, bearing Cause No. 2019DCV-2117-A (the “State Court Action”) against Defendants United Property, Bruce Wells, Phillip Benjamin, and Allen Boddie. *See Plaintiffs’ Original Petition*, attached hereto as **Exhibit B**.

2. United Property was served notice of this lawsuit on May 7, 2019. Defendants Bruce Wells, Phillips Benjamin and Allen Boddie were dismissed from this action with prejudice by the state court on July 1, 2019 , by way of Defendant United Property’s *Election of Legal Responsibility*

Under Section 542A.006 of the Texas Insurance Code. See Signed Order of Dismissal of Defendants Bruce Wells, Phillip Benjamin and Allen Boddie incorporated herein under **Exhibit B**. Said Order was signed by the state court on July 1, 2019, and was entered into the state court record that same day. Pursuant to 28 U.S.C. § 1446(b)(3) this *Notice of Removal* has been timely filed by the Defendant within thirty (30) days following receipt of the Signed Order dismissing Defendants Bruce Wells, Phillip Benjamin and Allen Boddie with prejudice, *i.e.*, when the case first became removable.

3. Pursuant to 28 U.S.C. § 1446(a) a copy of all process, pleadings, and orders served upon Defendant in the State Court Action are incorporated herein under **Exhibit B**.

4. Pursuant to 28 U.S.C. § 1446(d), promptly after filing this *Notice of Removal*, Defendant will give written notice of the removal to David Rjasko and Imelda Benavides (collectively “Plaintiffs”) through their attorneys of record, and to the clerk of the 28th Judicial District Court of Nueces County, Texas.

II. JURISDICTION

5. Removal of the State Court Action to this Court is proper pursuant to 28 U.S.C. §§ 1332 and 1441(a) and (b) because: (1) there is complete diversity between Plaintiffs and Defendant, and (2) the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

A. COMPLETE DIVERSITY EXISTS BETWEEN PLAINTIFFS AND UNITED PROPERTY

6. Plaintiffs are domiciled in Nueces County, Texas. In their Original Petition, Plaintiffs allege that they are individuals residing in Nueces County, Texas¹. Pursuant to 28 U.S.C. § 1332(a), Plaintiffs are citizens of the State of Texas.

¹ See *Plaintiffs’ Original Petition*, **Exhibit B**, at p.. 2.

7. Defendant United Property & Casualty Insurance Company is a foreign organization incorporated pursuant to the laws of the State of Florida and does not have its principle place of business in Texas. Pursuant to 28 U.S.C. § 1332(c)(1), United Property is a citizen of the State of Florida.

8. Accordingly, there is complete diversity between the properly joined parties pursuant to 28 U.S.C. § 1332(a).

B. AMOUNT IN CONTROVERSY EXCEEDS \$75,000.00

9. Plaintiffs' *Original Petition* states that "Plaintiffs seek monetary relief over \$200,000.00, but not more than \$1,000,000.00."² Plaintiffs' Petition shows on its face that Plaintiff's claims are in excess of \$75,000.00 excluding interest and costs, and the amount in controversy requirement for removal set forth in 28 U.S.C. § 1446(c)(2)(A)-(B) is satisfied.

III. VENUE

10. Venue for removal is proper in this district and division because this district embraces the 28th Judicial District Court of Nueces County, Texas, the forum in which the removed action was pending.

IV. EXHIBIT INDEX

Exhibit A Index of Matters Being Filed;

Exhibit B All executed process in this case, including copies of:
All executed process in this case, including Plaintiff's Original Petition, Nueces County Process Request Sheet, Citation for Allen Boddie, Citation for Phillip Benjamin, Citation for Bruce Wells, Citation for United Property & Casualty Insurance Company, Returned Certified Mail on Allen Boddie, Returned Certified Mail on Bruce Wells, Returned Certified Mail on Phillip Benjamin, Defendant, United Property & Casualty Insurance Co.'s Election of Legal Responsibility Under Section 542A.006 of the Texas Insurance

² See Plaintiffs' *Original Petition*, **Exhibit B**, at p. 6.

Code, Proposed Order of Dismissal of Defendants, Bruce Wells, Phillip Benjamin, and Allen Boddie, Defendant, United Property & Casualty Insurance Company's Original Answer to Plaintiff's Original Petition and Request for Disclosure, Returned Certified Mail on United Property & Casualty Insurance Company, Executed Order of Dismissal of Defendants, Bruce Wells, Phillip Benjamin, and Allen Boddie, Notice of Judgment and/or Dismissal, and District Clerk's Docket Sheet.

Exhibit C List of all Counsel of Record:

Exhibit D Civil Cover Sheet

V. CONCLUSION

13. Removal of this action under 28 U.S.C. § 1441(a) is proper as the district courts of the United States have original jurisdiction over the matter pursuant to 28 U.S.C. § 1332, and as all requirements for removal under 28 U.S.C. § 1446 have been met.

VI. PRAYER

WHEREFORE, Defendant United Property & Casualty Insurance Company, respectfully prays that the state court action be removed and placed on this Court's docket for further proceedings as though it had originated in this Court and that this Court issue all necessary orders. United Property further requests any additional relief to which it may be justly entitled.

DATE: July 17, 2019.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: */s/ Sarah R. Smith*

Sarah R. Smith

Attorney-In-Charge

Texas State Bar No. 24056346

USDC-SD Texas No. 1196616

Gene M. Baldonado

Texas State Bar No. 24071065

USDC-SD Texas No. 1287996

24 Greenway Plaza, Suite 1400

Houston, Texas 77046

Telephone: 713.659.6767

Facsimile: 713.759.6830

sarah.smith@lewisbrisbois.com

gene.baldonado@lewisbrisbois.com

ATTORNEYS FOR DEFENDANT
UNITED PROPERTY & CASUALTY
INSURANCE COMPANY

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure, I hereby certify that a true and correct copy of the foregoing instrument has been delivered to all interested parties on July 17, 2019, via e-filing addressed to:

Brennan M. Kucera
Benjamin R. Crowell III
Crowell & Kucera, PLLC
2028 E. Ben White Blvd.
Suite 240-2015
Austin, Texas 78741
Telephone: 512.870.7099
Facsimile: 512.388.9520
brennan@ck-firm.com
ben@ck-firm.com
Attorneys for Plaintiffs

Via Eserve

/s/ Sarah R. Smith

Sarah R. Smith